



# November 2005

Minnesota Department of Labor and Industry

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of workers' compensation claims**



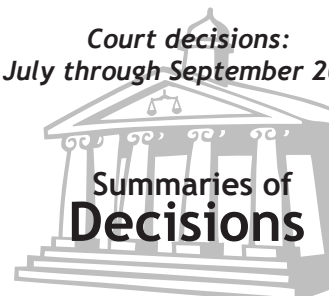
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## **WORKERS' COMPENSATION DIVISION: Improving service through division restructure**

*By Patricia Todd, Assistant Commissioner, Workers' Compensation Division*

In September at the Department of Labor and Industry's Workers' Compensation Division, the directors of the Compliance Services unit and the Customer Assistance unit both retired. As a result of these retirements, I took the opportunity to evaluate how best to provide services to our external stakeholders. As a result of this evaluation, the organizational structure within the division has changed.

Effective in October, the Customer Assistance and Compliance Services units no longer exist. Instead, Benefit Management and Resolution has been established, with three segments: Assistance and Education, Alternative Dispute Resolution, and Compliance.

### **Assistance and Education**

Assistance and Education will be responsible for: phones, log letters, certifications, training and process documentation. I have asked this unit to focus its efforts on reducing the response time for requests for information and providing/recommending alternative dispute resolution prior to certification of disputes.

### **Alternative Dispute Resolution**

Alternative Dispute Resolution will be responsible for: mediation and conferences. I have asked this unit to focus its efforts on reducing the response time for mediations, marketing our services and facilitating early resolution of disputes.

### **Compliance**

Compliance will be responsible for: penalties, denials, rehabilitation investigations and medical investigations. I have asked this unit to review all denials and continue to appropriately adhere to the penalty requirements.

I will be interviewing candidates for the director of Benefit Management and Resolution. I am considering internal and external candidates and will be looking for an individual who has experience in change management and strong managerial skills.

To provide a consistent level of service, the working hours for the Workers' Compensation Division will be changing. Effective in November, staff members will be required to work eight hours a day, five days a week.

These organizational changes are just the beginning of our efforts to continually improve, evaluate and change the division's daily activities. I look forward to working with all members of the workers' compensation community to facilitate the quick and efficient delivery of benefits to injured workers at a reasonable cost.



Patricia Todd was recently appointed as the new assistant commissioner of the Department of Labor and Industry (DLI) Workers' Compensation Division by DLI Commissioner Scott Brener. Formerly, Todd was the director of Minnesota OSHA Compliance for almost four years.

## Primary liability determination of workers' compensation claims

By Philip Moosbrugger, Compliance Supervisor



The Department of Labor and Industry has an interest in ensuring a high standard of quality of denial notices and has a statutory mandate to enforce the laws relating to the quality of denial notices. Yet the rate at which claims are denied, and the quality of the stated reasons for those denials, varies widely among insurers and self-insured employers.

The Compliance team of the newly created Benefit Management and Resolution unit will begin to look more closely at Notice of Insurer's Primary Liability Determination (NOPLD) forms to ensure denials are being appropriately documented in accordance with the statutes and rules. NOPLD denials will be routinely reviewed for compliance with required elements. Penalties may be issued where NOPLDs are found to be deficient.

It is hoped this effort will improve the quality and consistency of denial notices throughout the industry. We feel that adherence to these denial notice requirements will benefit all stakeholders in the workers' compensation system in Minnesota. Call the Department of Labor and Industry, at (651) 284-5005, with any questions you may have concerning this issue.

## Keeping you current: DLI e-mail list resource



The Department of Labor and Industry maintains three e-mail lists geared toward providing up-to-date workers' compensation information:

- 1) adjusters;
- 2) rehabilitation providers; and
- 3) medical providers.

For more information, an archive of past messages or to subscribe to one (or all three) of the lists, visit [www.doli.state.mn.us/agencylists.html](http://www.doli.state.mn.us/agencylists.html).



# Minnesota mediation success stories

By Keith Keesling, Benefit Management and Resolution Director

Mediation can produce resolution when parties' positions are seemingly far apart. Often, the distance between the parties is caused by lack of understanding by one or both of the parties.

## Case 1

The unrepresented injured worker demanded \$300,000 to settle his claim on a full, final and complete basis. The insurer made an initial counteroffer of \$25,000. The mediator asked the parties how they'd arrived at their respective positions.

It was then that the mediator learned the injured worker did not understand how to properly value the case. The plaintiff looked at what he had earned during the previous 18 years, projected that forward 18 years, then added \$50,000 for a possible retraining plan. In a private caucus, the mediator educated this person about what the likely amount of exposure the insurer might have in a case such as his (\$70,000) and suggested he consider reducing his demand.

The injured worker then demanded \$70,000. The negotiation process ended then with a resolution and a settlement worth \$50,000, leaving medical benefits open.

## Case 2

This matter began as an administrative conference under Minnesota Statutes §176.106. The dispute was about the need for a rehabilitation consultation. The arbitrator asked the parties if a mediator could speak to each party in a private caucus. They agreed.

The mediator met with the unrepresented insurance adjuster first, reviewing – in detail – the law about this benefit claim and the exposure for substantial

attorney's fees if he lost. He changed his position, reaching an agreement with the plaintiff's attorney, not only about the QRC who would perform the consultation, but also about the amount of fees to be awarded in the dispute.

These two cases illustrate how educating a party can create the opportunity for the parties to resolve their dispute. However, sometimes the gap is caused not by a lack of education or information, but, instead, by emotional, ego-based positions.

Nevertheless, a skilled mediator can provide a means to bridge this type of gap, turning an impasse into a resolution.

## Case 3

During the course of a lengthy mediation session, the parties were able to narrow a \$170,000 gap to \$45,000. The mediation then stalled, as neither party was willing to budge from its final position. This situation can spell

the death of all hope for settlement, and often does, because the parties are now emotionally invested in their respective positions. The parties both fear that any further movement would show weakness to the other side and that this may be used to the other side's advantage in the future.

A mediator's proposal is a good alternative to terminating the session. It allows the parties to continue forward toward resolution, without risking their current position.

In this case, the mediator proposed what he thought the settlement terms should be, advising the parties to write "yes" or "no" on a sheet of paper and to then seal the paper in an envelope. The envelopes were then given to the mediator to privately open and review. If either party rejected the proposal, the mediator would then inform the parties that there was no settlement. Neither party would know



how the other party responded to the proposal. If both parties said yes, which is what happened in this case, then the mediator would announce the impasse was over, since agreement was now reached. Now, neither party would have to say that it gave in to the demands of the other party. But, most importantly, both parties were given the opportunity to successfully resolve the dispute.



Sometimes the dispute involves not only *what* should be paid, but *who* should pay it. The following is an example of how mediation can expeditiously resolve an apportionment dispute.

#### Case 4

An employee had two alleged injuries at successive employers. Each employer referred her to the other to collect workers' compensation benefits and neither would pay her claim, even though there was never really any dispute that she was owed benefits from *someone*.

The mediator contacted the two insurers and pointed out that both may benefit from mediating this dispute to at least explore the possibility of resolving the dispute without litigation. The mediator reminded the insurers they risked nothing but a couple of hours of their time; if an agreement could not be reached, they still had all of their rights and defenses.

The insurers agreed to try mediation. The session, which was attended in person by the two insurers and the injured worker, was successful. The insurers not only agreed to pick up the injured worker's claim, but also agreed to an apportionment formula and who the paying agent would be. The injured worker agreed to accept a small discount on some of the past due indemnity benefits, but in return, established an income stream for the future and payment of medical bills so she could continue to receive medical treatment for her condition.

The insurers, through mediation, avoided a substantial litigation expense, which they would otherwise have incurred to get the liability, apportionment and paying agent issues resolved.



**For more information about the  
Department of Labor and Industry's  
mediation services, call:**

**(651) 284-5005  
or  
1-800-342-5354**



## DLI Commissioner to lead national government labor organization



Commissioner Scott Brener

Department of Labor and Industry Commissioner Scott Brener has been named as president of the National Association of Government Labor Officials (NAGLO).

NAGLO is a professional association consisting of the chief official in each state and territory of the United States responsible for overseeing the laws that protect and serve working men and women throughout the nation.

The association has been active since the early 1900s and has been witness to the dramatic changes related to workers and the workplace in that time.

For more information about NAGLO, visit its Web site at [www.naglo.org](http://www.naglo.org).

### Medical fee schedule changes in effect

The Minnesota Department of Labor and Industry (DLI) revisions to the workers' compensation medical fee schedule were published Sept. 19, 2005, in the *State Register* at [www.comm.media.state.mn.us/bookstore/stateregister/30\\_12.pdf](http://www.comm.media.state.mn.us/bookstore/stateregister/30_12.pdf) and became effective Oct. 1.

The changes were made in accordance with legislation, passed during the 2005 session, that mandated removal of scaling factors for the RVUs, creation of separate conversion factors for provider groups and a phased-in increase in reimbursement for chiropractic services.

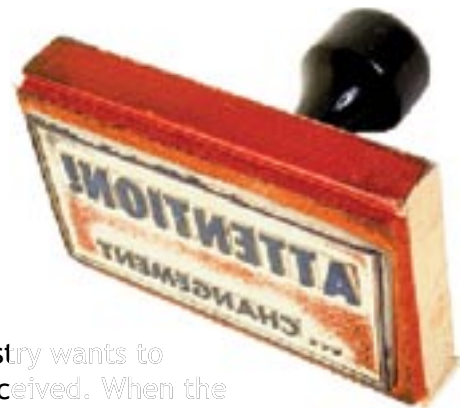
The updated medical fee schedule can be accessed through the DLI Web site at: [www.doli.state.mn.us/workcomp.html](http://www.doli.state.mn.us/workcomp.html).

### Mailing change: *fees for rehabilitation provider registration*

By Jeanne Gehrman, Rehabilitation Provider Registration Specialist

Effective immediately, all applications for registration and renewal of registration for **qualified rehabilitation consultants (QRCs)**, **QRC firms** and **registered rehabilitation vendors** should now be addressed as follows:

**Financial Services  
Department of Labor and Industry  
443 Lafayette Road N.  
St. Paul, MN 55155**



To streamline internal processes, the Department of Labor and Industry wants to assure all receipts for registration fees are deposited on the date received. When the Financial Services unit prepares the check for deposit, the registration application documents will then be date-stamped and delivered to appropriate staff members the same day, as usual.

Checks for registration fees should be made payable to "Commissioner of Labor and Industry." Registration fees are payable pursuant to Minnesota Statutes §176.102, subd. 14.

## Workers' compensation family farm coverage where other insurance coverage requirements are met

Farm operations are considered either family farms or employers for the purpose of workers' compensation coverage. The chart below may be used in determining whether workers' compensation coverage is mandatory for a farm operation where other coverage under a farm liability insurance policy as provided in the law is underwritten (see Minnesota Statutes §176.011, subd. 11a).\*

The value of work performed (roughly payroll) during the previous year is compared to the average annual wage (AAW) for the year in which the policy is written. Farm operations with payrolls equal to or greater than the corresponding AAW are required to provide workers' compensation coverage for their farm laborers. The AAW figure is received from the Department of Employment and Economic Development and is the number from which the statewide average weekly wage (SAWW) is derived.

### Family farm coverage

M.S. § 176.011, subd. 11a (a)(2)

Average annual wage under M.S. §176.011 subd. 20	Services rendered (roughly payroll) year	Policy written year
\$30,086	Jan. 1-Dec. 31, 1998	Jan. 1-Dec. 31, 1999
\$31,943	Jan. 1-Dec. 31, 1999	Jan. 1-Dec. 31, 2000
\$33,366	Jan. 1-Dec. 31, 2000	Jan. 1-Dec. 31, 2001
\$35,311	Jan. 1-Dec. 31, 2001	Jan. 1-Dec. 31, 2002
\$36,457	Jan. 1-Dec. 31, 2002	Jan. 1-Dec. 31, 2003
\$37,311	Jan. 1-Dec. 31, 2003	Jan. 1-Dec. 31, 2004
\$38,441	Jan. 1-Dec. 31, 2004	Jan. 1-Dec. 31, 2005
\$40,203	Jan. 1-Dec. 31, 2005	Jan. 1-Dec. 31, 2006

\* If the farm liability insurance coverage requirements are not met, any farm operation that has \$8,000 or more of payroll for the previous calendar-year must provide workers' compensation insurance for its employees.

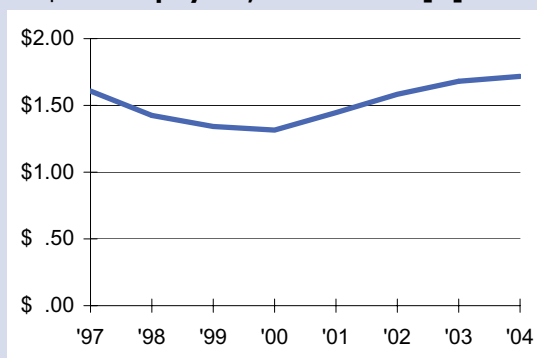
## Comp cost growth slows in 2004

*By David Berry, Research and Statistics*

The growth in Minnesota's workers' compensation costs moderated in 2004.

The overall cost of the system came to \$1.72 per \$100 of payroll in 2004. The increase from \$1.68 in 2003 (revised) is the smallest since costs began their upward climb after 2000. The 2004 figure is 31 percent above the low-point of \$1.32 in 2000, but 34 percent less than the peak of \$2.60 in 1993. These figures reflect premiums paid by insured employers plus an estimate of costs for self-insured employers.

**Workers' compensation system cost per \$100 of payroll, 1997-2004 [1]**



	Cost per \$100 of payroll
1997	\$1.61
1998	1.42
1999	1.34
2000	1.32
2001	1.45
2002	1.58
2003 [2]	1.68
2004 [2]	1.72

1. Data from the National Association of Insurance Commissioners, Minnesota Workers' Compensation Insurers Association, Inc., Minnesota Assigned Risk Plan, Minnesota Workers' Compensation Reinsurance Association, Minnesota Department of Labor and Industry, and Minnesota Department of Employment and Economic Development. Includes insured and self-insured employers.
2. Preliminary.



# RECAP: Rehab by the rules

Rehabilitation  
update  
conferences

Nearly 500 participants attended the two "Rehab by the rules" seminars offered by the Department of Labor and Industry (DLI) Workers' Compensation Division in September and October, at the University of Minnesota's Continuing Education and Conference Center in St. Paul. Attendance at department updates is required for all qualified rehabilitation consultants (QRCs).

For more information about training events, visit the DLI Web site at [www.doli.state.mn.us/wctrain.html](http://www.doli.state.mn.us/wctrain.html).

At right (top to bottom): Jana Williams, DLI Benefit Management and Resolution (formerly Compliance Services), welcomes the participants and explains the seminar materials. Kate Berger, DLI Legal Services, discusses revisions to the rehabilitation rules. Brian Zaidman, DLI Research and Statistics reads his "bedtime story" about rehabilitation claims statistics, after getting comfortable in a robe and slippers.

Below: Attendees at the September "Rehab by the rules" seminar at the University of Minnesota's Continuing Education and Conference Center in St. Paul.

